

**UNITED STATES DISTRICT COURT**

## **EASTERN DISTRICT OF LOUISIANA**

**COMPLAINT FOR DECLARATORY JUDGMENT**  
**ORDERING A PRODUCTION OF DOCUMENTS**

The sole issue in these proceedings is a Production of Documents.

Plaintiff, Bank of Louisiana (“Bank”), in its Complaint for Declaratory Judgment Ordering a Production of Documents, Costs, Attorney’s Fees and Sanctions, respectfully states as follows:

## Introduction

I

On November 1, 2013, the Federal Deposit Insurance Corporation (“FDIC”), filed a Notice of Charges against the Bank for violating numerous Compliance regulations.

II

On November 15, 2016, the Board of Directors adopted a Recommended Decision by Administrative Law Judge (“ALJ”) Richard Miserendino, based on a Summary Disposition. The Bank filed an appeal in the U. S. 5<sup>th</sup> Circuit Court of Appeals.

III

In the meantime, in a similar case, *Lucia et al versus the Securities and Exchange Commission*, Lucia contended the ALJ was not constitutionally appointed and had no authority.

**IV**

On June 21, 2018, the U.S. Supreme Court agreed with *Lucia*, Reversed and Ordered a new hearing before another properly appointed official. 585 U.S. \_\_\_\_\_ (2018)

**V**

On September 5, 2018, the 5<sup>th</sup> Circuit Remanded to the FDIC.

**VI**

On July 19, 2018, prior to the Remand on September 5, 2018, the FDIC allegedly, at a Notational Meeting, constitutionally appointed ALJs Miserendino and O'Neil by means of a Resolution. At the same meeting it allegedly Ordered a rehearing not a new hearing.

**VII**

It is the Production of Documents incidental to this July 19, 2018 meeting that are the basis of this Complaint. Similar requests; Board Meeting of May 28, 2019.

**VIII**

An invalid meeting invalidates the Resolution and Order.

**Parties & Jurisdiction**

**IX**

Plaintiff, Bank of Louisiana, is a state-chartered bank.

**X**

Defendant is the Federal Deposit Insurance Corporation.

**XI**

This Court has subject matter jurisdiction over this matter pursuant to 5 USC 552 (a)(4)(B) as acknowledged by the FDIC in letter dated August 28, 2019, Exhibit 12:

“For the reasons discussed above, your appeal is denied. Because your FOIA appeal has been denied, you may seek judicial review in the United States District Court under 5 U.S.C. § 552 (a)(4)(B).”

**Policy**

**XII**

It is the purported policy of the FDIC to ensure an effective and equitable supervisory program over the banking industry, free of unnecessary burden.

**XIII**

FDIC policies prohibit discrimination, retaliation, abuse, or retribution by any FDIC personnel. However, the Policy of Enforcement Counsel is Delay. Delay until the Adversary runs out of Time, Patience or Money.

**Law, Regulations, Bylaws**

**XIV**

**Law**

**The Freedom of Information Act**

**5 U.S.C. § 552, provides in part:**

- (a) (1) “a person may not ... be adversely affected by, a matter required to be published in the Federal Register and not so published.”
- (a) (2) “Each agency, ..., shall make available for public inspection in an electronic format ...”
- (a) (2) (A) final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;
- (a) (2) (E) “a general index of the records referred to under subparagraph (D)”

“Each agency shall make the index referred to in subparagraph (E) available by computer telecommunications by December 31, 1999.”

- (a) (4) (B) “On complaint, the district court of the United States in the district in which the complainant resides ... has jurisdiction to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from complainant. In such a case, the court shall determine the matter de novo ...”
- (b) (5) “Each agency having more than one member shall maintain and make available for public inspection a record of the final votes of each member in every agency proceeding.”

## XV

### **Regulations**

#### **12 CFR § 308.25 Request for document discovery from parties, provides in part:**

##### **(a) General rule.**

Any party may serve on any other party a request to produce for inspection any discoverable documents that are in the possession, custody, or control of the party upon whom the request is served.

##### **(b) Production or copying.**

... If a party requests 250 pages or more of copying, the requesting party shall pay for copying and shipping charges...

##### **(d) Motions to limit discovery.**

(1) Any party that objects to a discovery request may, within ten days of being served with such request, file a motion in accordance with the provisions of § 308.23 to strike or otherwise limit the request...

## **XVI**

### **12 CFR § 308.105 Custodian of the record.**

The Executive Secretary is the official custodian of the record when no administrative law judge has jurisdiction over the proceeding. As the official custodian, the Executive Secretary shall maintain the official record of all papers filed in each proceeding.

## **XVII**

### **Bylaws of FDIC**

#### Article IV Board of Directors

##### Section 6 (g) Meetings of the Board of Directors – Transaction of Business Without a Meeting

The Board of Directors may transact business by the circulation of written items to all members of the Board of Directors who can be contacted after a reasonable effort and in sufficient time to permit action where a majority of the members participate, in writing, in the disposition of each item of business and where such disposition, including the vote of each member with respect to each item of business, is recorded in the minutes of the proceedings of the Board of Directors ...

## **XVIII**

### **Summary**

Plaintiff has Requested the Production of Documents via the Law, to no avail.

Plaintiff has Requested the Production of Documents via Discovery, to no avail.

Plaintiff has Requested the Production of Documents via FOIA Requests, to no avail.

**XIX**

These Requests are supported in detail in a September 11, 2019 Declaration by G. Harrison Scott, which Declaration is made part hereof and constitutes the basis for a Declaratory Judgment.

**XX**

**Conclusion**

The Bank Request this Honorable Court issue a Declaratory Judgment Ordering the FDIC to deliver a copy of all documents that pertain to the July 19, 2018 Meeting and the Request for Production of Documents.

Respectfully submitted,

BANK OF LOUISIANA

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at New Orleans, Louisiana